Supreme Court, U.S.
FILED
JAN 15 2003
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No. 02-919

In The

Supreme Court of the United States

MARY ALICE DESSASAU,

Petitioner,

versus

DOUGLAS M. COOK, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONSE ON BEHALF OF VERN HERZOG AND BRUCE COVELL, JR.

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CERTIFICATE OF INTERESTED PERSONS

1. Joanne Billingsley, Defendant – Appellee
2. Louis D. Boccardi, Defendant – Appellee
3. David Boylan, Defendant – Appellee
4. David S. Bralow, Esquire – Counsel for Appellee
5. J. Stewart Bryan, II, Defendant – Appellee
6. Honorable Susan C. Bucklew, U.S. District Court Judge
7. Honorable Governor Jeb Bush, Defendant – Appellee
8. Robert A. Butterworth, Defendant – Appellee
9. Sandra Carey, Defendant – Appellee
10. Carmen Y. Cartaya, Esquire, Counsel for Appellee
11. Thomas W. Caufman, Esquire, Defendant – Appellee
12. Andrea L. Chilton, Defendant – Appellee
13. City of Tampa, Florida, Defendant – Appellee
14. Claudia S. Cockrell, Defendant – Appellee
15. Harry Lee Coe, Defendant – Appellee
16. Douglas M. Cook, Defendant – Appellee
17. Bruce Covell, Jr., Defendant – Appellee
18. Colleen David, Spokeswoman
19. Mary Alice Dessasau, Plaintiff – Appellant
20. Barbara Doyle, Defendant – Appellee
21. Denis L. Durkin, Esquire, Counsel for Appellee
22. Scott Farr, Defendant – Appellee
23. Edward A. Feaver, Defendant – Appellee
24. Jerry M. Gewirtz, Esquire, Counsel for Appellee

CERTIFICATE OF INTERESTED PERSONS –
Continued

25. David M. Giles, Esquire, Counsel for Appellee
26. Buddy Gissendonner, Esquire, Defendant – Appellee
27. Dick Greco, Defendant – Appellee
28. Donna Hardy, Defendant – Appellee
29. Vern Herzog, Defendant – Appellee
30. Jim Hart, Defendant – Appellee
31. Richard Hixon, Defendant – Appellee
32. Bennie Holder, Defendant – Appellee
33. Orval Jackson, Defendant – Appellee
34. Karen M. Kramer, Esquire, Counsel for Appellee
35. Jim Major, Defendant – Appellee
36. Joseph F. McDermott, Esquire, Counsel for Appellee
37. Ann Mehaffey, Defendant – Appellee
38. Susan Tillotson Mills, Counsel for Appellee
39. Robert Murdock, Defendant – Appellee
40. Patrick J. Niemann, Defendant – Appellee
41. S. Nixdorf, Defendant – Appellee
42. Lindsay Peterson, Defendant – Appellee
43. Mark Pizzo, United States District Court Magistrate Judge
44. Linda Radigan, Defendant – Appellee
45. Bruce W. Sanford, Esquire, Counsel for Appellee
46. Ann Sarantos, Defendant – Appellee
47. Ella Mae Smith, Defendant – Appellee

CERTIFICATE OF INTERESTED PERSONS –
Continued

48. Sharyn Smith, Defendant – Appellee
49. Phillip Jay Spengler, II, Esquire, Counsel for Appellee
50. Charles Taylor, Defendant – Appellee
51. Gregg Darrow Thomas, Esquire, Counsel for Appellee
52. Denise White, Defendant – Appellee
53. Graham Woodlief, Defendant – Appellee

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STATEMENT OF JURISDICTION

These Respondents do not believe that this Court should exercise its discretionay jurisdiction to review this matter. Petitioner is seeking review of the rulings of the Eleventh Circuit Court of Appeals affirming the U.S. District Court, Middle District of Tampa's denial of a motion for reconsideration. This matter is not reviewable. The Petition for Writ of Certiorari is without merit and should not be considered by this Court.

STATEMENT OF THE ISSUE

WHETHER THIS COURT SHOULD EXERCISE DISCRETIONARY JURISDICTION TO REVIEW THE ELEVENTH CIRCUIT COURT OF APPEALS ALLEGED ERROR IN AFFIRMING THE DISTRICT COURT'S DENIAL OF A MOTION FOR RELIEF FROM JUDGMENT.

STATEMENT OF THE CASE

On or about March 19, 1999, Petitioner, Mary Alice Dessasau, filed a Complaint in the U.S. District Court, Middle District of Florida, against numerous defendants including Respondents, Vern Herzog and Bruce Covell, Jr. Plaintiff/Petitioner filed an Amended Complaint on or about June 7, 1999.

On July 23, 1999, these Respondents filed a Motion to Dismiss by Special Appearance. The United States District Court, Middle District of Tampa, entered an Order granting these Respondents' Motion to Dismiss on October 26,

1999. On March 15, 2001, the Eleventh Circuit Court of Appeals issued an Opinion Affirming the District Court decision. Appellant's App.4.

On February 15, 2002, Petitioner filed a Motion for Relief from Judgment or Order. Based on the Court's lack of jurisdiction, that Motion was denied on February 26, 2002, by the District Court. (A copy of the District Court's Order is attached hereto as App. 1.)

Petitioner filed a Notice of Appeal as to the District Court's February 26, 2002 Order on March 6, 2002, to the Eleventh Circuit Court of Appeals. The Eleventh Circuit Court of Appeals affirmed the findings of the U.S. District Court and dismissed the appeal on September 11, 2002. Petitioner is now seeking review of the rulings of the Eleventh Circuit Court of Appeals. Appellant's App. 1.

STATEMENT OF THE FACTS

In 1995, Petitioner was the Administrator of the Ambrosia Nursing Home, in Tampa, Florida. As the result of an investigation by the State of Florida's Agency for Health Care Administration and an inspection of the Ambrosia Nursing Home, a Petition for Appointment of Receiver for the Ambrosia Nursing Home was filed by the State of Florida's Agency for Health Care Administration on August 11, 1995. Petitioner alleged, in the Complaint in the courts below, that she was wrongfully terminated as the Administrator of the Nursing Home on August 10, 1995 and that the State of Florida's Agency for Health Care Administration wrongfully commenced disciplinary actions against her. Petitioner also alleged in the courts below that the Board of Nursing dismissed the claims

against her on January 30, 1996 and revoked her Nursing Home Administrator's license in February, 1998. Petitioner alleged in the courts below that she was arrested on March 21, 1997 and charged as an accessory after the fact to adult abuse charges arising from an incident in May, 1995. Petitioner also alleged that she was acquitted of the charges in August, 1997.

The Complaint and Amended Complaint before the trial court alleged defamation, negligence, fraud and violations of the United States Constitution and 42 U.S.C. §§1983, 1985 and 1988 as to 38 named defendants including members of the local and state government and the media, arising from the alleged adult abuse incident in May, 1995, the State of Florida's Agency for Health Care Administration's investigation and Petitioner's arrest in 1997.

As to Respondent COVELL, the Complaint and Amended Complaint alleged that his payment of a fine imposed upon the Ambrosia Nursing Home by the State of Florida's Agency for Health Care Administration caused him to become part of a conspiracy against the Petitioner. Respondent HERZOG is only listed in the caption of the Complaint and Amended Complaint and the ad damnum clause but there were no allegations against him before the lower court.

STATEMENT OF THE STANDARD OR SCOPE OF REVIEW

This Court has discretionary jurisdiction to review by Petition for Writ of Certiorari a decision of an United States Court of Appeals which conflicts with the decision

of another United States Court of Appeals on the same important matter; a decision of an United States Court of Appeals that has decided an important federal question in a way that conflicts with a decision by a state court of last resort or has departed from the accepted and usual course of proceedings or sanctioned such a departure by a lower court as to call for the exercise of this Court's supervisory power. Further, this Court has discretionary jurisdiction to review the decision of an United States Court of Appeals that has decided an important federal question which has not been, but should be, settled by this Court or has decided an important federal question that conflicts with relevant decisions of this Court.

SUMMARY OF ARGUMENT

This Court should not exercise its discretionary jurisdiction to review the Petition for Writ of Certiorari. The Petition is without merit and Petitioner's case does not fit within matters which are properly reviewed by this Court. The Petition for Writ of Certiorari does not present conflict between decisions of United States Courts of Appeals, nor a conflict with relevant decisions of this Court. Further, the Petition does not present a matter of an important federal question nor require this Court's supervisory powers over any lower court.

ARGUMENT

I. THIS COURT SHOULD NOT EXERCISE DISCRETIONARY JURISDICTION TO CONSIDER THE PETITION FOR WRIT OF CERTIORARI

Petitioner seeks review of the rulings of the Eleventh Circuit Court of Appeals, entered September 11, 2002, affirming the findings of the United States District Court, Middle District of Tampa, that the District Court was without jurisdiction to review a decision of the Eleventh Circuit Court of Appeals. Appellant's App. 1. The Eleventh Circuit Court of Appeals premised its rulings in part on its prior rulings in *Villano v. City of Boynton Beach*, 245 F.3d 1302 (11th Cir. 2001) finding that Rule 60(b) "cannot be employed to breathe second life into an appeal that has already been taken and dismissed by the appellate court." *Id.* at 1313. The Eleventh Circuit Court of Appeals expressly found that it had previously affirmed the U.S. District Court's dismissal of this action setting forth in detail the reasoning and law controlling the issues presented and Petitioner herein was attempting to relitigate issues already decided. Appellant's App. 1. Petitioner is once again seeking review of matters decided, without presenting a legitimate basis for this Court's discretionary jurisdiction.

In the initial appeal which resulted in the Opinion of March 15, 2001, issued by the Eleventh Circuit Court of Appeals (Appellant's App. 4), Petitioner sought review from rulings by the District Court. The Eleventh Circuit Affirmed the District Court's rulings. Petitioner then sought to have the U.S. District Court grant relief from the rulings by the Eleventh Circuit. The District Court correctly determined that it was without jurisdiction to provide the relief sought by Petitioner. Petitioner then

sought review by the Eleventh Circuit which affirmed the findings of the District Court. Appellant's App. 1. Not willing to accept these rulings, Petitioner is now seeking review of the Eleventh Circuit's rulings without any basis to employ this Court's jurisdiction. Petitioner has not recited conflict or other bases for this Court to accept jurisdiction. Compare, *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502 (1962) (function of Supreme Court is to resolve conflicts occurring among federal circuits). This Court need not consider the Petition for Writ of Certiorari. There should be an end to Petitioner's continuous burdening of the Courts and continuous expenditure of judicial resources and the parties' time with a matter that is without merit.

The Petition alleges "violations of the First and Fourteenth Amendments by the lower courts". However, even a review of the rulings of which Petitioner complains (Petitioner's Appendix and the Appendix hereto) does not exhibit error nor conflict in the rulings by the lower courts which would warrant this Court's review. Petitioner cannot seek this Court's discretionary review by labeling as improper judicial conduct rulings which are simply adverse to the Petitioner. *Rescue Army v. Municipal Court*, 331 U.S. 549 (1947) (Court will not consider matter where constitutional issues are not present in the record in clear and concrete form to allow the development of sound constitutional principles). It is clear that a Petition for Writ of Certiorari will only be granted for compelling reasons, 28 U.S.C. U.S. Sup. Ct. Rule 10. Respondents submit that there are no compelling reasons present herein for this Court's time to be employed in this matter. Petitioner has not shown conflicts among the Circuit Courts of Appeals and state courts concerning the meaning

of provisions of federal law or any other legitimate basis for this Court's jurisdiction. *Braxton v. U.S.*, 500 U.S. 344 (1991). Petitioner alleges "denial of right of access to the courts", yet there is no substantiation for this assertion. Rather the gravaman of the Petitioner's claim herein is a series of rulings and judgments by the lower courts in civil proceedings which Petitioner has prosecuted since 1999, which rulings and judgments have simply been adverse to the Petitioner. There is no indicia that any court has denied Petitioner's access to the court nor that there has been judicial error or misconduct in the application of federal law which this Court should address. Petitioner's apparent dismay with the judicial process does not create the basis for certiorari jurisdiction. In *Clark v. Florida*, 475 U.S. 1134 (1986), this Court considered a matter wherein there were multiple appellate proceedings by a pro se litigant who refused to accept adverse judgments and alleged denial of access to the courts and constitutional violations. This Court noted that the claim was "frivolous as to not warrant any further discussion." The matter sub judice is analogous given that Petitioner persists in pursuing patently frivolous appeals, erroneously alleging that she has been denied access to the courts and labeling the claim as one of violation of constitutional protections, which only serves to waste judicial time and resources as well as the time and resources of the Respondents. This Court should not exercise its discretionary jurisdiction to review the Petition.

CONCLUSION

The named Defendants Vern Herzog and Bruce Covell, Jr., request that this Court decline to review the Petition for Writ of Certiorari as it is not within the Court's exercise of discretionary jurisdiction.

Respectfully submitted,

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APPENDIX INDEX

February 26, 2002 Order denying Motion for Relief from Judgment or Order ..... App. 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MARY ALICE DESSASAU
a/k/a MARY ALICE GREEN,

Plaintiff,

-vs-

Case No.
99-1170-Civ-T-24MAP

DOUGLAS M. COOK, et. al.,

Defendants,

ORDER

(Filed February 26, 2002)

This cause comes before the Court for consideration of Plaintiff's Motion for Relief from Judgment or Order (Doc. No. 120, filed February 15, 2002). The Plaintiff appears to be seeking relief from an opinion entered by the Eleventh Circuit Court of Appeals.[1] This court, however, has no jurisdiction to provide relief from the opinion entered by the Eleventh Circuit Court of Appeals.

Accordingly, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion for Relief from Judgement or Order (Doc. No. 120) is **DENIED** as this Court is without jurisdiction to provide the relief sought by the Plaintiff.

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[1] The Plaintiff moves for relief from the judgement or order entered March 5, 2001. The Eleventh Circuit Court of Appeals opinion was entered March 15, 2001. There is no order or judgment in the record that was entered on March 5, 2001.

DONE AND ORDERED at Tampa, Florida this *26th* day of February, 2002.

/s Susan C. Bucklew
Susan C. Bucklew
United States District Judge

Copies to:
Counsel of Record